

INCREASING ENFORCEMENT OF A CIVIL RIGHT

“LEVELING THE PLAYING FIELD”

FOR

Persons with Disabilities, Aging Problems, and A Parent with
Young Children



“LEVELING THE PLAYING FIELD”: Thurgood Marshall

“REASONABLE

ACCOMMODATION”

eliminates obstacles against people with disabilities: it is not remedial policy for past discrimination. It is not giving people with disabilities any advantage over non-disabled people. It merely “LEVELS THE PLAYING FIELD.”

Thurgood Marshall

LEVEL? - OR - 20th CENTURY DENIAL OF CIVIL RIGHT?



ADA Sec.36.103 Relationship to other laws. (1991)

(c) Other laws. This part does not invalidate or limit the remedies, rights, and procedures of any other Federal laws, or State or local laws (including State common law) that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.

PROTECTING CUSTOMER SAFETY

Americans with Disabilities Act

Sec.36.304 Removal of barriers. (1991)

(c) General. A public accommodation shall remove architectural barriers in existing facilities, including communication barriers that are structural in nature, where such removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense.

Listed Barrier (11) Installing accessible door hardware;
[A set of entry door (handle, push bar and closer) is **approximately \$140.00** and takes **approximately one hour to install.**]

TO PROTECT PUBLIC SAFETY

- SEAT BELT LAW EFFECTIVE
JANUARY 1, 1968
- CAR AIRBAGS EFFECTIVE
1998

NON-ACCESSIBLE OBSTRUCTIVE
HIGHLY PRESSURED DOORS

Falls: *may cause death*

Injuries: *may not heal*

Mental Health: *impact on brain,
cognition, anxiety, dignity,
independence*

Never Accessible: 1968, 1973, 1991, 1992,
2002, 2006, 2010, 2015, today

VIRGINIA BUSINESS – 20th or 21st Century?

OPENING NEW OPPORTUNITIES AND ECONOMIC AREAS:

- Virginia first to legislate retrofitting of entry doors for inclusion of its multi-generational diversity of citizenry
- Attraction of young families to Virginia's workforce
- Loans for small business retrofitting companies
- Employment of workers to change hardware by management companies
- New research studies through Virginia Universities
- Accomplishment of what San Francisco could not achieve in 2003

Form **8826**(Rev. December 2013)
Department of the Treasury
Internal Revenue Service**Disabled Access Credit**

▶ Attach to your tax return.

▶ Information about Form 8826 and its instructions is at www.irs.gov/form8826.

OMB No. 1545-1205

Attachment
Sequence No. **86**

Name(s) shown on return

Identifying number

1	Total eligible access expenditures (see instructions)	1	*	3,000	00
2	Minimum amount	2		\$ 250	00
3	Subtract line 2 from line 1. If zero or less, enter -0-	3		2750	00
4	Maximum amount	4		\$10,000	00
5	Enter the smaller of line 3 or line 4	5		2750	00
6	Multiply line 5 by 50% (.50)	6		1375	00
7	Disabled access credit from partnerships and S corporations	7			
8	Add lines 6 and 7, but do not enter more than \$5,000. Partnerships and S corporations, report this amount on Schedule K. All others, report this amount on Form 3800, line 1e	8			

For Paperwork Reduction Act Notice, see instructions.

Cat. No. 12774N

Form **8826** (Rev. 12-2013)

The tax credit on an installed
automatic door = \$1,375⁰⁰

Virginia Attorney General Mark Herring's Response, Virginia Senator Chris Stolle, May 4, 2017

The ADA is a federal civil rights law that prohibits discrimination upon the basis of physical or mental disability. It generally does not apply retroactively; only commercial facilities designed and constructed for first occupancy after January 26, 1993 are subject to ADA standards. Nevertheless, it does provide that existing facilities “shall remove architectural barriers” for disabled persons when such changes would be “readily achievable.” It lists examples of changes deemed “readily achievable”, one of which includes “[i] installing accessible door hardware.” **Thus, it provides for limited retroactive application by requiring the retrofitting of manual entry door hardware for commercial facilities constructed prior to the effective date of the Act. It is enforceable by individual lawsuits or the United States Attorney General.**

“In keeping with the Dillon Rule, where the General Assembly expressly limits the power of a locality, rather than enabling it, the express limitation must be given effect.

For the reasons set forth above, and in response to your inquiry about local authority to enact ordinances on this subject, **it is in my opinion that under current law a locality lacks authority to enact an ordinance requiring the retrofitting of commercial facilities with manual entry door hardware, where the facilities were constructed prior to the effective date of the ADA.**

SENATE BILL NO. 1515

Offered January 19, 2017

A BILL to amend the Code of Virginia by adding in Article 1 of Chapter 9 of Title 15.2 a section numbered § 15.2-926.4, relating to existing buildings; manual entry door hardware.

Patron—Wagner

Referred to Committee on Local Government

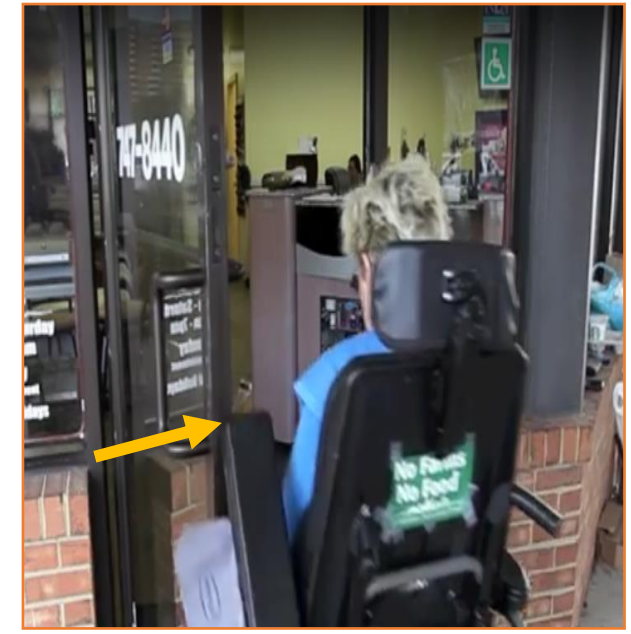
Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 9 of Title 15.2 a section numbered § 15.2-926.4 as follows:

§ 15.2-926.4. Authority of localities to require compliance with the Americans with Disabilities Act.

A. For the purposes of this section, "building" means any existing building or facility including health care, commercial, and governmental facilities, not including a building designated as historic by its inclusion in the National Register of Historic Places or its designation as a National Historic Landmark.

B. Any locality may by ordinance require any property owner to install manual entry door hardware in any building located in its jurisdiction where such fitting is affordable and readily achievable.



IS THIS REALLY WHAT WE VIRGINIA CITIZENS WANT FOR
SOMEONE WHO HAS HAD A STROKE
IN THE 21st CENTURY??

The strength exerted, the energy lost, the lack of dignity?
The compensation to use her right side is causing an
additional health problem in her right hip.

What are her choices?

1. Stay home and be isolated.
2. Complain to the clerk once she enters.
3. Know that she will have problems exiting.
4. Ask help exiting if it is not offered.
5. Suffer continual anxiety at other unadjusted doors with outdated hardware.



6. Never go back to that public accommodation.
7. Avoid all public accommodations that have unadjusted doors with outdated hardware.
8. Continually feel discouraged and anxious if she wishes to go to a public accommodation.
9. Give up and stay home because she is tacitly told she is not equal to others who enter the establishment.

FILING A DIRECT CIVIL ACTION OR COMPLAINT WITH THE DEPARTMENT OF JUSTICE: THE INEQUALITY OF PROCESS

20th CENTURY REASONING

1. The customer is already dealing with issues of compromised Activities of Daily Living (ADL), including loss of precious energy and fatigue = increased anxiety to file.
2. Each door (of which there are millions) has to have a separate complaint or lawsuit.
3. Each business and building owner can suffer up to a \$50,000 or \$100,000 non-compliance fine.
4. Building owner, business and complainant go through a stressful negative situation.
5. Businesses renting in older buildings lose revenue. People avoid going to a store, doctor, restaurants and other businesses potentially hurtful to enter. Occupancy loss occurs in older buildings, creating monetary loss for the property owner.

21st CENTURY CONSEQUENCES

RECENT SETTLEMENTS OF THE DEPARTMENT OF JUSTICE

2011: Wells Fargo
2014: Owner and Business

Both Commercial Building Owners and Tenants were held responsible in 2014 denying access by inaccessible entry doors, each receiving fines.

Increased litigation by individuals since 2012

Research evidence exists of customer loyalty to welcoming, accessible businesses.



THE INSULT TO THE PRIMARY CAREGIVER STRUCK BY THE DOOR IS DEGRADING,
ESPECIALLY WHEN EXHAUSTED FROM CARING FOR A LOVED ONE.

Entering creates ANXIETY for the person in the wheelchair.

THE OVERWHELMING AND STRESSFUL TASKS OF DAILY CARE ELIMINATES THE TIME AND ENERGY FOR LITIGATION.

EGRESS ISSUES ARE EVEN MORE DANGEROUS



1/2" uncomfortable, hard to hold
square bar

Large panel requires change of hand
position while simultaneously pushing
oneself over the threshold as the door
closes upon the person exiting.

One door at a time...millions of doors

20th CENTURY THINKING

The only enforcement agency is the Department of Justice. A person can directly sue a public accommodation or make a complaint, and if the court can request the DOJ take action...

Confusion of Laws and Codes protects discrimination for multi-generations of customers

“The deck is stacked against persons the law was enacted to assist.

Does it have to be? NO

The ADA requires private businesses to provide modifications that will enable people with disabilities to enjoy the goods and services being offered.

**Readily Achievable Barrier Removal History:
1968 (Architectural Barriers Act-federal buildings) incorporated into 1973 Rehabilitation Act, 1990 in ADA, Standards of 1992 (all existing buildings), 2002, 2006, 2010**

*STANDARDS SHOW NOT-ACCESSIBLE,
ACCESSIBLE DOOR HARDWARE
AND PRESSURE REQUIREMENTS*

CITIZENS NEEDING ASSISTANCE

Figure 2.
Disability Prevalence and the Need for Assistance
by Age: 2010
(In percent)



By 2030, 70%
over age 65
will need
accommodation.

Note: The need for assistance with activities of daily living was not asked of children under 6 years.

Source: U.S. Census Bureau, Survey of Income and Program Participation, May–August 2010.

2012 VIRGINIA GENERAL ASSEMBLY

Section 36-99.01 "Provisions related to rehabilitation of existing buildings (Housing (A) and Commercial Buildings (B)) in the 2012 Related Laws.

Paragraph C states:

The Board is hereby directed and empowered to make such changes as are necessary to fulfill the intent of the General Assembly as expressed in subsections A and B, ***including, but not limited to amendments to the Building Code*** and adequate training of building officials, enforcement personnel, contractors, and design professionals throughout the Commonwealth.

[Emphasis added]

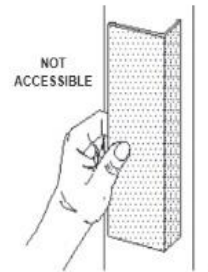
OLDER BUILDINGS IN OLDER AND POORER COMMUNITIES PROMOTES FURTHER DETERIORATION

Denial of changing hardware and door pressure “leaves citizens behind”, who have been loyal customers, as owners elect to build new buildings

Intentional ignorance is recognized by the Department of Justice

Hardship and potential injuries in opening doors to elderly, single parent with small children or persons with compromised physical or mental abilities is not good business

Lack of accessible entrances hurts revenue of small business tenants, who often are young persons with new families to support



**NON-ADJUSTED PRESSURED DOOR
WITH CORRECT HARDWARE
20th Century Minimum Thinking**



Solution!

Everyone Knows:

The responsibility for Public Safety belongs to *all* of us.

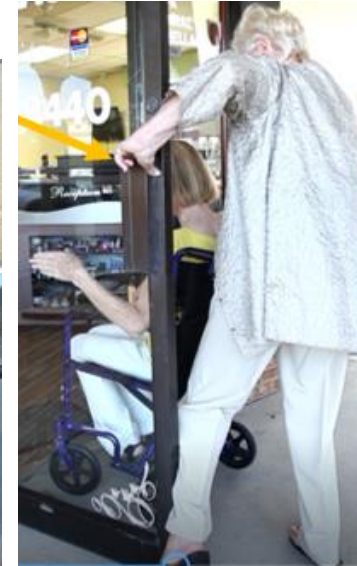
Public safety measures:

- Seat Belts
- Bicycle Lanes
- Air Bags for Cars
- Wheel Chair Ramps
- Car Seats for Children
- Slip and Fall Protection
- Crumple Zones on Cars
- Audible Crosswalk Signals
- Water Barrels on Highways
- Safety Railings on Public Stairs

This sign can't prevent a fall.



But this simple allen wrench, found in most American toolboxes, can *prevent* injuries to invitees.



BUILDINGS LAST DECADES LONGER THAN CARS

HOW LONG WILL WE ALLOW IGNORANCE AND DENIAL OF THE
INTENT OF LAWS AND CODES MADE FOR PUBLIC SAFETY?
ESPECIALLY A CIVIL RIGHTS LAW MADE TO GUARANTEE
EQUAL ACCESS TO GOODS AND SERVICES
FOR THOSE WITH COMPROMISED PHYSICAL OR MENTAL ABILITIES?



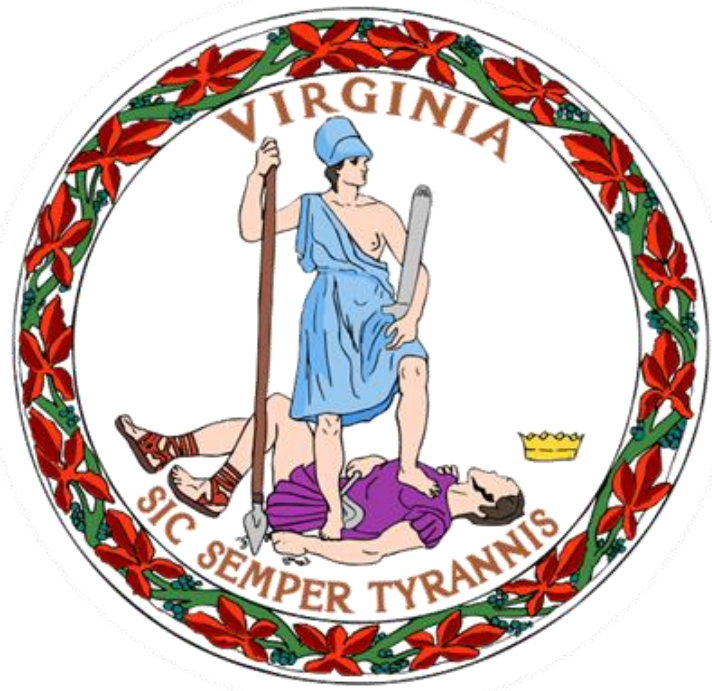
This accessible, manual door hardware costs about \$140.00 and takes approximately 1 hour to install. The pressure is adjusted with an allen wrench.

Not all older closers have to be replaced, IF THEY CAN BE ADJUSTED, according to ADA 2010 standards, making the cost under \$100.00.





“Since disability legislation is everyone’s “insurance policy”, we must demystify disability and counter the mystical “us-them” dichotomy because we all need these laws.”



Rebecca Ogle, Executive Director of the President’s Task Force on Employment for People with Disabilities, 1996